

1 DANIEL M. PETROCELLI (S.B. #97802)

2 dpetrocelli@omm.com

3 MATTHEW T. KLINE (S.B. #211640)

4 mkline@omm.com

5 DAVID J. MARROSO (S.B. #211655)

6 dmarroso@omm.com

7 O'MELVENY & MYERS LLP

8 1999 Avenue of the Stars, 7th Floor

9 Los Angeles, CA 90067-6035

10 Telephone: (310) 553-6700

11 Facsimile: (310) 246-6779

12 *Attorneys for Plaintiffs Colony Capital LLC*
13 *and Colony Investors IV, L.P.*

14 RONALD RICHMAN (*pro hac vice* pending)

15 Ronald.Richman@srz.com

16 SCHULTE ROTH & ZABEL LLP

17 919 Third Avenue

18 New York, NY 10022

19 Telephone: (212) 756-2000

20 Facsimile: (212) 593-5955

21 *Attorneys for Defendant The National*
22 *Retirement Fund* (Additional Defense
23 Counsel Listed on Signature Page)

24 **UNITED STATES DISTRICT COURT**
25 **CENTRAL DISTRICT OF CALIFORNIA**

26 COLONY CAPITAL, LLC, a
27 Delaware limited liability company,
28 and COLONY INVESTORS IV,
L.P., a Delaware limited partnership,

Plaintiffs,

v.

THE NATIONAL RETIREMENT
FUND, and DOES 1 through 20,
inclusive,

Defendants.

Case No. 2:11-cv-07235 R (AGRx)

**JOINT STIPULATION REGARDING
SCHEDULING OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION PENDING
DECLARATORY RELIEF ACTION**

[PROPOSED] ORDER
CONCURRENTLY FILED HEREWITH

Honorable Manuel L. Real

JOINT STIPULATION

WHEREAS, on September 1, 2011, Plaintiffs Colony Capital, LLC and Colony Investors IV, L.P. (“the Colony Parties”) filed a Complaint for Declaratory Relief against Defendant National Retirement Fund (“the Fund”) in the above-captioned action;

WHEREAS, on September 1, 2011, the Colony Parties filed a Motion for Preliminary Injunction Pending Declaratory Relief Action (“the Preliminary Injunction Motion”);

WHEREAS, pursuant to rule, the Colony Parties noticed the Preliminary Injunction Motion for hearing on October 3, 2011, at 10:00 a.m.;

WHEREAS, the Parties have engaged in discussions concerning discovery, briefing, and scheduling matters, including regarding the Preliminary Injunction Motion, and have reached agreement on certain of these matters as set forth below:

NOW THEREFORE, the undersigned parties hereby STIPULATE that:

1. Immediately following the parties’ execution of this stipulation, the Colony Parties will withdraw, without prejudice, the Preliminary Injunction Motion; the Colony Parties will re-file it to be heard on November 7, 2011;

2. The parties will confer during the week of September 12, 2011 to discuss (a) the scope and timing of the limited, expedited, bilateral discovery to be taken, and (b) a new briefing schedule, in accordance with the Court’s rules, on the preliminary injunction motion that the Colony Parties will refile;

3. The Colony Parties shall have fifteen (15) days after (a) the Court rules on the Preliminary Injunction Motion that the Colony Parties intend to refile or (b) the refiled Preliminary Injunction Motion is otherwise disposed of, to initiate an arbitration pursuant to 29 U.S.C. § 1401, *et seq.* concerning the withdrawal liability determination made by the Fund under 29 U.S.C. §§ 1381-99 (and during this time period any requirement to file such an arbitration will be tolled);

4. Until (a) 15 days after the Court rules on the Colony Parties' refiled Preliminary Injunction Motion or (b) 15 days after the Colony Parties' refiled Preliminary Injunction Motion is otherwise disposed of, the Fund will not request any payments or seek to accelerate, declare a default, or file a collection or other action or arbitration against the Colony Parties with respect to any withdrawal liability assessment the Fund has made against the Colony Parties, *e.g.*, 29 U.S.C. §§ 1399(c)(5); 1451(b), 1145, 1132(g)(2); 29 C.F.R. § 4219.31(b), 4219.31(c)(1);

5. The Parties will confer during the week of September 12, 2011, to discuss other means and procedures to expedite an efficient resolution of their dispute.

6. Nothing herein shall waive the Parties' respective claims, defenses, rights or other arguments, including, without limitation, the Fund's defenses and/or arguments with respect to venue. To be clear, the Colony Parties submit that this venue is the appropriate venue in which this case should proceed, and the Fund intends to challenge the venue.

Dated: September 12, 2011

Respectfully Submitted,

By: /s/ Daniel M. Petrocelli
 DANIEL M. PETROCELLI
 O'MELVENY & MYERS LLP
 Attorneys for the Colony Parties

Dated: September 12, 2011

Respectfully Submitted,

By: /s/ Ronald Richman
 RONALD RICHMAN
 SCHULTE ROTH & ZABEL LLP
 Attorneys for The Fund

Dated: September 12, 2011

Respectfully Submitted,

By: /s/ Patricia Glaser
 PATRICIA GLASER
 JILL BASINGER
 GLASER, WEIL, FINK, JACOBS,
 HOWARD, AVCHEN & SHAPIRO, LLP
 Attorneys The Fund